Supreme Court, U.S.
FILED
JAN 26 2001
CLERK

No. 00-876

IN THE

Supreme Court of the United States

JOHN CHRISTO, JR., JOHN CHRISTO, III, JAMES PHILLIP CHRISTO and IRENE LAURETTE CHRISTO,

Petitioners,

v.

KENNETH EARL PADGETT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT WILLIAM J. MILLER, JR., TRUSTEE

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PARTIES TO THE PROCEEDING

Petitioners fail to list as a party William J. Miller, Jr. ("Miller"), as trustee in bankruptcy for John Christo, Jr. ("Christo"), and they seek no relief against Miller in their Petition. Because Petitioners seek no relief against Miller, it is Respondent's position that the Petitioners lack standing to pursue this appeal, that this Court is unable to grant any effective relief, and that this Court therefore lacks jurisdiction over the Petition. These points are dealt with in the Argument portion of Padgett's Brief in Opposition, as well as in this Brief in Opposition.

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STATEMENT OF THE CASE

A. Statement of the Facts

On February 16, 1994, Christo, Jr., filed his petition under Chapter 7 of the United States Bankruptcy Code. Christo, Jr. (the debtor), filed a list/schedule of assets as required under applicable bankruptcy law. Christo did not list a potential cause of action based on alleged oral agreement between himself and Respondent Padgett. However, in a Chapter 11 proceeding related to the Christo bankruptcy, Miller learned of the allegations regarding a potential cause of action against Padgett.

After conducting Bankruptcy Rule 2004 examinations, as well as gathering other evidence, Miller filed a lawsuit against Padgett and Bay Bank, in part alleging the existence of the alleged oral contract. After discovery by Padgett, including the deposition of Christo, Jr., Miller filed a voluntary dismissal of the two counts of the lawsuit relating to the alleged oral agreement.

The relevant facts with respect to the bankruptcy issues are as follows. Prior to the summer of 1993, Florida Bay Banks, Inc. ("FBB") owned all of the outstanding stock of Bay Bank & Trust Company ("Bay Bank"). John Christo, Jr. ("Christo" or "Debtor") owned 97% of the outstanding shares in FBB. FBB was indebted to SouthTrust Bank, N.A., ("SouthTrust") in an amount in excess of $4 million. This indebtedness was secured by FBB's pledge of 100% of the shares of Bay Bank. A foreclosure sale was scheduled for September 30, 1993. For some time prior to the auction, Christo attempted to sell Bay Bank. However, when it appeared that no sale would be consummated prior to the

September 30, 1993 foreclosure date, Christo contacted a long-time friend, Kenneth Earl Padgett ("Padgett").

Padgett flew to the scheduled auction in Birmingham, Alabama. Padgett and SouthTrust were bidding extensively throughout the day of the bidding of the auction. Christo now says that Padgett was bidding on his behalf or on behalf of Christo and his children ("Christo Group" or "Christos") while Padgett claims he was bidding on his own behalf.

Subsequent to the auction of September 30, 1993, SouthTrust filed a motion in the United States District Court of the Northern District of Florida, claiming that the bidding had been a "sham" and that Padgett was a "straw man" for Christo. The District Court held an evidentiary hearing and ultimately allowed the sale to proceed.

After the auction, but prior to the consummation of the sale, Christo filed an individual bankruptcy proceeding under Chapter 7 of Title 11, United States Code. In his bankruptcy filings, Christo never stated that he had a cause of action against Padgett nor did he assert that there was an existing contract between Christo and Padgett.

Upon the filing of the bankruptcy petition, William J. Miller, Jr. ("Miller") was appointed as case trustee. Although not related to him by Christo, Miller eventually learned of an alleged agreement between Padgett and Christo. Miller filed suit against Padgett and Bay Bank in February, 1996, alleging a breach of contract as well as certain bankruptcy voidable transfer actions. Christo was deposed and later Miller dismissed the claim which was based on the alleged oral agreement.

In the Fall of 1997, the Christo Group filed suit against Padgett alleging the existence of an oral agreement. The Christo Group alleged that this agreement was on behalf of the entire Christo Group and not just John Christo, Jr. In the Winter of 1998, following a request to do so, Miller filed a notice of intent to abandon any interest in any claim against Mr. Padgett arising out of the alleged agreement. This was done as an accommodation and abandonments are a matter of routine for bankruptcy trustees.

Padgett objected to the proposed abandonment and subsequently settled with Miller. The terms of the settlement are as follows:

1. Mutual releases of all parties;

2. Bay Bank's subordination of all but one of its claims against the estate; and

3. Payment by Padgett/Bay Bank to the estate of $15,000.00.

As an additional condition to the settlement, it was contingent upon a court order determining that only Miller owned any potential cause of action against Padgett arising out of the alleged oral agreement. As is required under the Bankruptcy Code, the notice of intent to enter into the settlement was served upon the creditors of Christo and filed with the bankruptcy court. The other family members objected, but Christo, the Debtor, did not object on his own behalf.

The suit filed by the Christo Group against Padgett was removed to the United States District Court some time after

it was filed in the Fall of 1997. The issue of the objection to the proposed settlement with Miller was withdrawn from the Bankruptcy Court by the District Court.

The District Court held an evidentiary hearing in order to address issues raised by the parties. The District Court, in the order scheduling the hearing, gave notice that its hearing may determine ownership rights in the alleged asset. The Christo Group attended the hearing and presented evidence throughout the day. The District Court entered an order finding that neither Christo nor his family owned any claims against Padgett. The District Court further found that any claims arising out of an alleged oral agreement belonged to Miller, as trustee of the Estate of Christo. The remaining issues regarding the settlement were sent to the Bankruptcy Court for a report and recommendation.

The Bankruptcy Court, based upon the facts found by the District Court, determined that approval of the settlement was in the best interest of the bankruptcy estate. This report and recommendation was issued in October, 1998. The District Court, in October, 1998, adopted and incorporated the report and recommendation of the Bankruptcy Court.

The Christo Group appealed the District Court order approving the settlement. Upon appeal to the Eleventh Circuit Court of Appeals, the Court affirmed, finding that the District Court's factual findings, made in the "Miller litigation" were not clearly erroneous.

B. Proceedings Below

On November 14, 1997, the Christos filed an action (the "State Action") against Padgett in the Fourteenth Judicial

Circuit in and for Panama City, Bay County, Florida. In their complaint, the Christos asserted four claims based on Padgett's breach of the Agreement, all arising under state law. The Christos demanded a jury trial in the State Action.

On December 5, 1997, Padgett filed a Notice of Removal removing the State Action to the United States District Court for the Northern District of Florida on a variety of grounds. On January 12, 1998, the Christos filed a Motion to Remand, contesting the bases for removal of the State Action asserted in the Notice of Removal. The Motion to Remand was eventually denied by the District Court in its October 1, 1998 Order (the "Remand Order").

On March 19, 1998, Padgett and William J. Miller, Jr., as trustee in bankruptcy for Christo[1], entered into a settlement agreement (the "Settlement Agreement"). On April 28, 1998, Padgett filed his motion seeking to obtain the District Court's approval of the Settlement Agreement, and the dismissal of the State Action pursuant to the Settlement Agreement. On June 30, 1998, the District Court held a one-day evidentiary hearing to consider the propriety of approving the Settlement Agreement.

On July 14, 1998, the District Court entered its Order (the "Referral Order") referring Padgett's motion to approve the Settlement Agreement to the bankruptcy court for a report and recommendation as to whether the motion should be granted. As part of the Referral Order, the District Court found, based solely on the evidence presented at the June 30 hearing, that neither Christo nor any of his children had any

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1. Christo filed a petition for bankruptcy under Chapter 7 of the United States Bankruptcy Code on February 16, 1994.

claim against Padgett based on the Agreement between Christo and Padgett.

On October 1, 1998, the District Court entered the Remand Order denying the Christos' Motion to Remand and granting Padgett's Motion to Dismiss the State Action. On October 7, 1998, the bankruptcy court entered its Order recommending approval of the Settlement Agreement, and the District Court granted Padgett's motion to approve the Settlement Agreement on October 22, 1998.

On August 25, 2000, the United States Court of Appeals for the Eleventh Circuit filed its decision: (1) concluding that it was without jurisdiction to review the District Court's decision not to remand the State Action, and (2) affirming the District Court on all other grounds.

REASONS FOR DENYING THE WRIT

PRELIMINARY STATEMENT OF BANKRUPTCY TRUSTEE, WILLIAM J. MILLER, JR., REGARDING HIS OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The petitioners have not asked this Court to reverse the findings that the bankruptcy estate owns the asset which is the subject matter underlying the causes of action outlined in their petition. Furthermore, Miller, Trustee, has not been listed as a party in the Petitioners' list of all parties to the Proceeding". Furthermore, the caption of the case has only one respondent, *i.e.*, Kenneth Earl Padgett.

The petitioners have not sought specific relief against Miller as trustee for the bankruptcy estate of John Christo, Jr.

The order underlying this appeal involves two cases, one originating in the United States Bankruptcy Court for the Northern District of Florida and the other originating in Florida state court. The state court action was removed to the United States District Court of Florida. The Court of Appeals for the Eleventh Circuit consolidated the Petitioners' appeals from various orders and judgments entered in both cases. Petitioners fail to list two entities that were parties to one of the two consolidated cases decided by the court of appeals: William J. Miller, Jr. ("Miller") and Bay Bank & Trust Co. ("Bay Bank").

Miller was involved in the bankruptcy case styled *In re: John Christo, Jr.*, Case No. 98-3663 below, because the primary protagonist in the lower courts, John Christo, Jr. ("Christo") is a debtor in a pending Chapter 7 bankruptcy filed on February 16, 1994. Miller is the trustee in bankruptcy for the estate of Christo. In his capacity as Chapter 7 trustee, Miller has consistently claimed to be the owner of the cause of action asserted by Petitioners against the Respondent, Kenneth Earl Padgett ("Padgett"), in the other of the two consolidated cases, *Christo v. Padgett*, Case No. 98-3577 below. Miller actively participated in all proceedings in the bankruptcy case at both the trial and appellate levels. In the bankruptcy case, the district court determined, after withdrawing the reference from the bankruptcy court and following an evidentiary hearing, that Miller was in fact the owner of the cause of action against Padgett and that none of the Petitioners had any interest in that cause of action. A-37.

Bay Bank is a privately-held Florida banking institution controlled by Padgett. It was a creditor in the Christo Chapter 7 case and was, therefore, involved in *In re: John Christo, Jr.*,

Case No. 98-3663 below. After the ownership interest was resolved in Miller's favor, the bankruptcy and district court approved Miller's settlement with Padgett and Bay Bank of the matters asserted in *Christo v. Padgett*, Case No. 98-3577. A-59; A-68.

The order determining that Miller owned the cause of action against Padgett and the order approving the settlement, both of which were entered in the underlying bankruptcy case, were affirmed by the Eleventh Circuit (A-25-26). These orders are not challenged by Petitioners in the Petition.

Neither Miller nor Bay Bank was directly involved in *Christo v. Padgett*, Case No. 3577 below. Miller, however, is in fact the only real party in interest on the Plaintiffs' side in that action since he has been determined to own it.

This Brief in Opposition to Petition for Certiorari is being filed out of an abundance of caution, although it is Miller's position that no relief has been sought and it cannot now be sought against him.

The Eleventh Circuit correctly upheld the District Court's finding that Miller owned any cause of action that the Christo Group are now claiming ". . . because any cause of action would have belonged solely to Christo, Jr., that cause of action became property of the estate when he filed his petition for bankruptcy." A-26. *See* 11 U.S.C. § 541(a)(1).

Miller owns any cause of action against Padgett relating to an alleged oral agreement. There has been no challenge of this ownership by the Petitioner's appeal to the Eleventh Circuit, nor in their petition for Writ of Certiorari filed before this Court. In filing this Brief in Opposition to the Petition

for Certiorari, Miller wants to make sure that the settlement is preserved.

I.

THE DISTRICT COURT, SITTING AS A BANKRUPTCY COURT, HAD JURISDICTION TO DETERMINE MATTERS RELATING TO THE BANKRUPTCY ESTATE, INCLUDING THE DETERMINATION OF WHETHER A CLAIMED ASSET IS AN ASSET OF THE ESTATE.

The District Court, sitting as a bankruptcy court, in conducting the evidentiary hearing which led to the determination that the claim, based upon an alleged oral contract, was property of the bankruptcy estate under 11 U.S.C. When Christo filed his Chapter 7 bankruptcy petition, an estate was created which included "all legal and equitable interest of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). Christo, as all debtors are, was legally bound to file a complete list of all assets with the bankruptcy court. 11 U.S.C. § 521. Christo failed to list any cause of action or claim against Padgett. As bankruptcy trustee, Miller became the owner of any such claim or cause of action, whether or not scheduled by the debtor.

The Bankruptcy Court had exclusive jurisdiction over the property of the estate, and therefore, the District Court, sitting as a bankruptcy court, had jurisdiction over the cause of action relating to the alleged oral agreement. Bankruptcy courts also have jurisdiction over any matter "related to" the bankruptcy case that could have an effect on the case. *Celotex Corp. v. Edwards*, 514 U.S. 300, 115 S. Ct. 1493,

131 L. Ed. 2d 403 (1995). Accordingly, the alleged cause of action was properly determined to be property of the bankruptcy estate by the District Court. Therefore, the District Court did not address the merits of the state action before it had satisfied itself of its jurisdiction over the subject matter. Consequently, the Eleventh Circuit was infinitely correct in affirming that issue on appeal.

The district courts have complete jurisdiction of all proceedings arising under a Title 11, or arising in or relating to cases under Title 11. 28 U.S.C. § 1334. Under 28 U.S.C. § 1334(d), the District Court has exclusive jurisdiction over all of the property, wherever located, of the debtor as of the commencement of the case, and of property of the estate. The determination of whether the Christo Group had a cause of action against Padgett, or whether Miller was the sole owner of that action, had a "conceivable effect" on Christo's bankruptcy estate. Therefore, federal jurisdiction lies within the bankruptcy court. *Celotex Corp. v. Edwards*, *supra*; *In re: Toledo*, 170 F.3d 1340, 1345-47 (11th Cir. 1999); *Miller v. Komira, Inc.* (*In re: Lemco Gypsum, Inc.*), 910 F.2d 784 (11th Cir. 1990).

The ownership of the cause of action, regardless of its viability, is a garden variety bankruptcy issue that was properly decided by the District Court, sitting as a bankruptcy court. The Petitioners have not challenged that factual finding in their appeal to the Eleventh Circuit, and have not challenged that finding (albeit too late at this point) in their Petition for Writ of Certiorari before this Court.

II.

THE ELEVENTH CIRCUIT DID NOT DECIDE AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS IN THIS COURT IN AFFIRMING THE DISTRICT COURT.

The right to a jury trial under the Seventh Amendment is not a right to have every factual issue determined by a jury. Although the petitioners now claim that they have been denied the right to a jury trial, under long established law, in summary judgments and other situations it is appropriate for a court to enter orders disposing of disputes without necessity of impaneling a jury. In the case at bar, the District Court made a finding as a predicate to the approval of the settlement agreement between Miller and Padgett. That finding was a final determination that Miller owned the cause of action, if any, between Christo and Padgett. The Eleventh Circuit correctly enunciated the rule of law that the District Court's factual findings were to be reviewed for "clear error". A-22, citing *General Trading, Inc. v. Yellow Materials Handling Corp.*, 119 F.3d 1485, 1494 (11th Cir. 1997). The Eleventh Circuit actually carried its analysis further in stating that "there is simply no evidence that was ever an agreement between Padgett and anyone other than Christo, Jr., himself." A-25-26.

On appeal to the Eleventh Circuit, Christo Group contended that District Court should not have weighed the evidence in light of the then-outstanding Motion for Summary Judgment and the Christos' demand for jury trial. The Eleventh Circuit addressed this by stating that "the district court made the contested factual findings in the Miller

litigation, however, litigation in which the Christos never attempted to intervene. The judge ordered a hearing on the issues underlying both the *Miller* and *Christo* litigations and invited all interested parties to present evidence. The district court's factual findings, made in the *Miller* litigation were not clearly erroneous. In any event, *summary judgment would have been appropriate on the Christos' claims* in light of the dearth of evidence that anyone other than Christo, Jr. would have had a viable claim against Padgett." A-26-27.

In other words, the Eleventh Circuit's opinion, in determining that summary judgment would have been appropriate in the *Christo* litigation, is in accord with longstanding law relating to summary judgments.

At pages 27-28 of their petition, the Christo Group contends that the district court "effectively granted summary judgment as to the Christo's state law claims. . . ." They then contend that the Eleventh Circuit affirmed the district court's action and in so doing they decided an issue in a way that conflicts with the relevant summary judgment decisions of this court. However, assuming arguendo that the district court did effectively grant a summary judgment, then what the Petitioners are now doing is actually seeking a review of the affirmance of a grant of summary judgment. That is, the Petitioners are now attempting to get this Court to review the Eleventh Circuit's affirmance of a summary judgment entered against them. There are a vast number of cases dealing with issues regarding summary judgments, and Miller suggests that the Eleventh Circuit's opinion does not conflict with the summary judgment decisions of this Court.

In affirming the District Court's factual findings, the petitioners were not denied any constitutional right to a jury

trial, and, therefore, the Eleventh Circuit's opinion does not conflict with relevant decisions of this Court.

CONCLUSION

For all of the foregoing reasons, William J. Miller, Jr., Trustee, respectfully requests that this Honorable Court deny the petition.

Respectfully submitted,

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